IN THE HIGH COURT OF CHHATTISGARH
AT BILASPUR

Single Bench

C.R. No. 93 OF 2006

REVISIONERS: 1. Bhola Ram, aged 45 years, son of Shri Chaitu Satnami,
2. Vishambhar, aged 43 years, son of Shri Chaitu Satnami,
Both residents of village Sukulkari, tehsil Masturi, district Bilaspur (C.G.)
(Objector)

VERSUS

RESPONDENTS: (1) Mansai, aged 60 years, son of Shri Kholu
(2) Dilsai, aged 50 years, son of Shri Kholu
(3) Hirasai, aged 40 years, son of Shri Kholu
All residents of village Dhuwakari, tehsil & district Bilaspur (Chhattisgarh)
(Plaintiffs/decree-holder)

(4) Sunder Singh @ Sunderlal, aged 60 years, son of Shri Sant Ram, resident of Dayalband, Bilaspur, tehsil & district Bilaspur (Chhattisgarh)
(Defendant/judgment-debtor)

P.R. No. 985/06
Presented by Shri
dated 10/8/06

CIVIL REVISION UNDER SECTION 115 OF THE CODE OF CIVIL PROCEDURE, 1908.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

14.09.2006

Shri Somnath Verma, learned counsel for the applicants.
Shri M.K. Bhaduri, learned counsel for the respondents.

With the consent of the parties, the revision is heard finally.

The applicants/revisioners have preferred this civil revision against the order dated 25.1.2006 passed by Additional District Judge, Bilaspur in Execution Case No. 5-B/99 and by which the learned executing Court has rejected the objections of the applicants against the order of attachment of the property described in paragraph – 1 of the application on the ground that the applicants are in possession of the suit property since the lifetime of their ancestors though the same is recorded in the name of judgment debtor in the revenue record.

The above application was preferred under Section 47 read with Section 151 of the Code of Civil Procedure. It was also contended in the said application that the applicants have preferred a civil suit No. 46-A/05 in the Court of 9th Civil Judge, Class-II, Bilaspur against the judgment debtor with respect to the same property which is at present pending there.

Learned counsel for the applicants submits that though the application has been preferred by the objectors under Section 47 of the C.P.C. but in fact that application was meant under Order 21 Rule 58 of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the C.P.C. and simply because of non-mentioning of its provisions in the application, the same cannot be rejected. It was incumbent upon the executing Court to adjudicate as per provisions of Order 21 Rule 58 of the C.P.C. He further submits that the objection has been rejected simply on the ground that the objectors have not filed any document to prima facie satisfy the executing Court that they were in possession of the suit property except their own affidavit and they themselves have admitted that the land in question is recorded in the name of judgment debtor in the revenue record. The only course open to the Court below was to stay the proceedings of the execution till the dispute between judgment debtor and the applicants/objectors is decided in a civil suit filed by the applicants. It is also argued that the instant revision is maintainable as the executing Court has not exercised the discretion vested in it.

On the other hand, learned counsel for the respondents has seriously questioned the maintainability of the instant revision petition in view of the proviso to Section 115 of the C.P.C. and submitted that even if the objection preferred by the applicants would have been allowed, in that case also the execution proceedings would not have been terminated finally and therefore, the instant revision is not maintainable. He further submits that if the objection of the objectors in execution proceedings

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

under Order 21 Rule 58 of the C.P.C. is rejected, the course open to the objectors is to prefer a civil suit as per Order 21 Rule 58 (5) of the C.P.C. by which the objector is at liberty to institute a suit to establish the right which he claims to the property in dispute.

I have heard learned counsel for the parties and have perused the impugned order.

It is not in dispute that a decree was passed in favour of respondent No. 1 to 3 against respondent No. 4 and the objection preferred by the applicants under Section 47 of the C.P.C. has been rejected on the grounds mentioned hereinabove. It is also not in dispute that a suit instituted by the applicants against the judgment debtor is pending before a competent civil Court and no interim order has been passed by the civil Court in that suit. As per order 21 Rule 58 of the C.P.C. adjudication of claims to, or objections to attachment of property is to be determined by the Court dealing with the claim or objection and not by a separate suit and as per sub-rule 4 where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree. According to sub-rule 5 where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

entertain it, the party against whom such order is made may institute a suit to establish the right, which he claims to be the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

Bare reading of Order 21 Rule 58 of the C.P.C. goes to show that the objection regarding claim of any objector or any other party is to be decided by the executing Court in execution proceedings and if the same is decided and the objection against the attachment of the property in that execution of the decree is not entertained, in that case the objector has the only remedy to institute a suit to establish his title. Since a civil suit has already been filed by the applicants in the instant case, the impugned order passed by the executing Court shall be subject to decision of the civil Court in the suit and the instant revision is not maintainable.

In the result, the revision being without any force is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge

P.T.O.